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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,653	06/26/2003	Chester Savage	SCH-031090 C2	4703
30981	7590	04/15/2004	EXAMINER	
King & Jovanovic, PLC 170 College Avenue SUITE 230 HOLLAND, MI 49423			BUECHNER, PATRICK M	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/606,653

Applicant(s)

SAVAGE ET AL.

Examiner

Patrick M Buechner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6 and 8 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. All references of record in parent applications 10/108,117 and 09/709,144 have been considered. However, as applicant has failed to list the patents on a FORM PTO-1449, they will not be printed on the face of any patent issuing from this application. Should applicant wish these references to be printed, a FORM PTO-1449 listing those patents should be provided.

### ***Oath/Declaration***

2. A new oath or declaration is required because, while normal in a continuing application the original declaration will suffice, changes may not be made to the original declaration. Here applicant has modified the original declaration with non-initialed changes in order to alter the power of attorney. This is improper and a new declaration is required. The wording of an oath or declaration cannot be amended. If the wording is not correct or if all of the required affirmations have not been made or if it has not been properly subscribed to, a new oath or declaration is required. The new oath or declaration must properly identify the application of which it is to form a part, preferably by application number and filing date in the body of the oath or declaration. See MPEP §§ 602.01 and 602.02.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Although a restriction requirement was made in parent application 09/709144, the claims in the current application differ from those in 09/709144 which required restriction.

5. Claims 2-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6 of U.S. Patent No. 6,607,097. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure claimed in the current application is inherent in the method claims of U.S. Patent No. 6,607,097.

The claims of the current application correspond to the claims of U.S. Patent No. 6,607,097 as follows in Table I.

Claims in application 10/606653	Claims in U.S. Patent No. 6,607,097
2	1
3	1, 6
4	1, 6

Table I

6. Claim 5, 6 and 8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-5 of U.S. Patent No. 6,607,097 in view of Tomic (US 5,743,435).

The method claims of U.S. Patent No. 6,607,097 inherently disclose the structure claimed in claims 5, 6, and 8, (see Table II below) with the exception of the spout having a flange.

Claims in application 10/606653	Claims in U.S. Patent No. 6,607,097
5	1, 3
6	1, 3, 5
8	1, 3, 4

Table II

Tomic teaches a spout (18) having a flange with fluid pathways (52) located on the inner surface.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the spout of U.S. Patent No. 6,607,097 with the flange, with fluid pathways on the inner surface, as taught by Tomic.

Doing so would provide for more sealing surface between the spout and the bag.

#### *Allowable Subject Matter*

7. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not disclose or fairly teach the collapsible bag and spout with a flange, as claimed, including concentric fluid pathways on the flange of the spout.

#### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Haberhauer (US 3,690,524), Gammons et al. (US 4,149,541), Meginnis et al. (US 4,269,032), Kosuth (US 5,178,021) and Frazier et al. (US 6,179,173).

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (703) 308-2602.

The examiner can normally be reached on 7:00am-4:30pm M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696, or the examiner's temporary supervisor can be reached at (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
PB



GREGORY L. HUSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700